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OCT 24 1994

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October 21, 1994

Hon. Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street N.W., 2nd fl.
Washington, D.C. 20554

Dear Judge Chachkin:

RE: Trinity Broadcasting of Florida, Inc., MM Docket No. 93-75

This case has been fully briefed. I write in reference to paragraph 230 of Trinity's Reply Brief, to which I am compelled to respond because Trinity has therein accused my client, SALAD, of lack of candor.

Trinity argues:

Remarkably, in a submission that repeatedly charges others with lack of candor, SALAD urges TBF's disqualification for abuse of process based on the following citation: "Silver Star Communications-Albany, Inc., 3 FCC Rcd 6342 (Rev. Bd. 1988) (*subsequent history omitted*)."
(SALAD PFCL ¶119, emphasis added). SALAD fails to disclose that, in the subsequent history it omits, the Commission reversed the Review Board decision and found that no abuse of process had occurred. Silver Star Communications-Albany, Inc., 6 FCC Rcd 6905 (1991). The Commission reached that conclusion because, like here, no willful intent to deceive was established. In stating "*subsequent history omitted*," SALAD admits that it knew the subsequent history in Silver Star but chose not to report it. The Presiding Judge undoubtedly will not wish to rely on a decision that the Commission reversed. [fn. omitted].

Trinity Reply Brief, p. 154, ¶230 (fn. omitted).

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Trinity's comments are excessive and unfortunate. Perhaps the fatigue and irritation which inevitably infect the writing of a huge volume of deadline material have taken their toll.

SALAD sincerely apologizes for not providing the full citation to Silver Star. However, the point of SALAD's argument was not the remedy chosen, but the nature of the wrongdoing to be remedied and the Commission's willingness to punish such wrongdoing. The full paragraph in SALAD's Findings and Conclusions to which Trinity objected reads as follows:

NMTV, which never invoked its minority status before the IRS or the public and never did anything of substance for minorities, will invariably argue that this proceeding is a high tech lynching, that punishing it will hurt minorities and somehow endanger the minority ownership policies. That is circular reasoning, for it assumes the conclusion that NMTV is a legitimate minority company. In fact, the Commission has not hesitated to punish even bonafide minorities who abuse these policies. See, eg., Silver Star Communications-Albany, Inc., 3 FCC Rcd 6342 (Rev. Bd. 1988) (subsequent history omitted) (minority owner put nonminority wrongdoer in charge of station purchased in distress sale). The Commission must be evenhanded, dealing similar justice when nonminorities front off minorities to achieve unlawful ends at the public's expense.

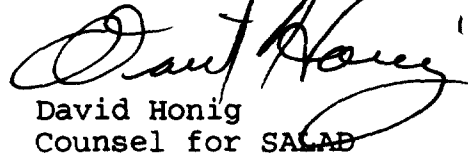
SALAD Findings & Conclusions, p. 33, ¶119.

In Silver Star (Commission), supra, 6 FCC Rcd at 6906-07, the full Commission did indeed "punish" the applicant, although not with denial of renewal. It issued a \$20,000 fine, based on what it considered "Silver Star's serious violation of the Communications Act." Id. at 6907 ¶22. However, it did not revoke the licenses, concluding that there was no "manifest abusive intent in this case" because (1) Silver Star was not a case "where a minority primarily served as a 'front' for a nonminority" and (2) the Bureau had not met its burden of showing that "it is more likely than not that an actual agreement [to sell Silver Star's Cordele, GA radio stations to a nonminority] existed" when Silver Star invoked the distress sale policy. Id. at 6907 ¶21. In the instant case, though, the record unequivocally shows that TBN and NMTV always intended to deliver all of NMTV's operating prerogatives and flexibility to TBN.

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Thus, SALAD's citation, though regrettably incomplete, was not misleading, and Trinity's imputation of bad faith was inappropriate. SALAD meant no offense to the Court by referring to the existence of subsequent history without citing that history directly.

Respectfully submitted,


David Honig
Counsel for SALAD

cc: James Shook, Esq.
Howard Topel, Esq.
Lewis Cohen, Esq.

/dh